UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In Re:	) Case No. 19-30088
	) Chapter 11
PG&E CORPORATION AND PACIFIC GAS AND ELECTRIC COMPANY	) San Francisco, California
	) Tuesday, September 12, 2023
Debtor.	) 10:00 AM

ORAL RULING ON SECURITIES PLAINTIFFS' MOTION FOR THE APPLICATION OF BANKRUPTCY RULE 7023 AND THE CERTIFICATION OF A CLASS OF SECURITIES CLAIMANTS FILED BY SECURITIES LEAD PLAINTIFF AND THE PROPOSED CLASS [13865]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (All present by video or telephone):

For the Debtor: RICHARD W. SLACK, ESQ.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153-0119
(212)310-8000

For PERA: THOMAS A. DUBBS, ESQ.
MICHAEL S. ETKIN, ESQ.
Labaton Sucharow LLP
140 Broadway
New York, NY 10005
(212)907-0700

For PERA: MICHAEL S. ETKIN, ESQ.
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, NJ 07068
(973)597-2500

For The State of Oregon: SUSAN F. DICICCO, ESQ.
Morgan, Lewis & Bockius LLP

	1400 Page Mill Road Palo Alto, CA 94304 (650)843-4000
For MML Investment Advisers LLC:	STACY DASARO, ESQ. Goodwin Procter LLP 620 8th Ave. New York, NY 10018 (212)813-8800
For RKS Claimants:	JEFFREY RITHOLTZ, ESQ. Rolnick Kramer Sadighi LLP 1251 Avenue of the Americas New York, NY 10020 (212)597-2800
Court Recorder:	LORENA PARADA/ANKEY THOMAS United States Bankruptcy Court 450 Golden Gate Avenue San Francisco, CA 94102
Transcriber:	DEANNA HINCHY eScribers, LLC 7227 N. 16th Street Suite #207 Phoenix, AZ 85020 (800) 257-0885

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SAN FRANCISCO, CALIFORNIA, TUESDAY, SEPTEMBER 12, 2023, 10:00 AM

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(Call to order of the Court.)

THE CLERK: Court is now in session. The Honorable Dennis Montali presiding. Calling the matter of PG&E Corporation. Your Honor, which matter would you like to start with?

THE COURT: I will take the 723 motion first. Not the Synergy one. That comes second.

THE CLERK: The submitted matter?

THE COURT: Pardon? Yes.

THE CLERK: Okay. I'll start bringing counsel in now.

THE COURT: Why don't we get appearances as counsel show up on the screen. Mr. (sic) DiCicco, you're first and then Mr. Etkin.

MS. DICICCO: Good morning, Your Honor. Susan DiCicco from Morgan Lewis, for the Oregon Securities Claimants.

THE COURT: Mr. Etkin?

MR. ETKIN: Good morning, Your Honor. Michael Etkin for PERA, (indiscernible) Slack.

THE COURT: Good morning.

Good morning, Mr. Slack.

MR. SLACK: Good morning, Your Honor. Richard Slack, Weil, Gotshal & Manges for PG&E.

THE COURT: Ms. Dasarao, you wish to make an appearance?

MS. DASARO: Yes. Good morning, Your Honor. Stacey Dasaro, on behalf of MML Advisors, investment advisor to the mass mutual funds.

THE COURT: Mr. Ritholtz?

MR. RITHOLTZ: Good morning, Your Honor. Jeffrey Ritholtz from Rolnick Kramer Sadighi for the RKS Claimants.

THE COURT: All right. I'm going to limit the appearances to that and announcements because you're the major participants. This is a ruling and I'm not expecting to hear from you very much, but I'll certainly hear from you at the end of the ruling, if anybody has some -- wants to raise anything. So --

MR. ETKIN: Your Honor?

THE COURT: Yes?

MR. ETKIN: I apologize. Ms. Parada, could you see if Mr. Dubbs is on? I would respectfully ask that he be included. He may -- maybe a phone number, Ms. Parada, the same issue we had the last time, as opposed to his name?

THE CLERK: I don't see Mr. Dubbs, and I have several phone numbers, so it's hard to distinguish.

MR. ETKIN: It would likely be an either an 860 number or a 212 number. And I --

THE COURT: There's a 212-310-8329. But he should

raise his hand if he wants to join the hearing.

THE CLERK: If he's joined by telephone, Your Honor, he cannot raise a hand.

THE COURT: Okay.

THE CLERK: Oh, I see what happened. He used the ID number.

THE COURT: Okay.

MR. DUBBS: Bearing with us.

THE COURT: Okay. If Mr. 2181914, Mr. Dobbs good morning. Are you there?

MR. DUBBS: Good morning, Your Honor. Sorry for the confusion. I'm here.

THE COURT: Okay. Well anyway, as you all know, I mean this is a ruling rather than an argument and so I'm just going to go ahead and make my ruling, and then if there's any reason to take discussions, I will.

And so as I've done before, Mr. Dobbs and Mr. Slack, and if you want, you can turn your camera off. It's up to you. I see Mr. Etkin isn't even on the camera. But that okay.

So as you all know, on August 23rd of this year, I held a hearing on the securities Plaintiff's motion and memoranda points in authorities, et cetera, regarding bankruptcy, Rule 7023, and the long title of the motion, you're familiar with. For now I'm going to call it the 723 motion at Docket 13865.

It was filed by PERA through counsel. And then I'm going to refer to PERA by name just because that's convenient. There were at least twelve joinders filed by various parties supporting the motion, and they are all identified in the docket. Some of you, your representatives are on the on the call. They were joinders, filed and then withdrawn by the International Brotherhood of Teamsters Local 282 and related entities.

And of course, on the other side, the Debtors and the RKS Claimants objected to the motion and opposed it. I've chosen an oral ruling, excuse me, as I have before, for efficiency sake. I'm sorry that it even took this long, but that's what happens.

But for the reasons I'll set forth below, I'm going to grant the motion and move forward on a parallel track with the pending ADR procedures that were approved years ago. And while everyone here participating in the hearing knows how and why we are here, I'm going to give a brief history as a means of setting it in context, and for the record.

So this is the third time I've been presented with a Rule 723 motion by PERA and its counsel. The first one was filed pre-confirmation, docket 5042 and sought to apply Rule 23 of the Federal Rules and 723 of the Bankruptcy Rules to class proof of claim and begin the certification process.

I denied that motion in favoring a more efficient

track towards confirmation as the clock for AB 1054 was running and frankly confirmation could not wait.

The second motion by PERA was filed post-confirmation docket 9152, and initially sought outright certification of limited class, quote, consisting of all those who purchased or otherwise acquired PG&E's publicly traded securities from April 29th, 2015 through November 15th, 2018, with a valid securities claims.

I denied that motion, as I was, at that point, confident that the alternative, the Debtors proposed ADR procedures again, that you're all familiar with, were adequate and that the second motion was not necessary.

You may recall, and the record reflects that I noted specifically, quote, if it turns out that the offer and acceptance mediation and related procedures failed significantly, we can revisit the question of whether remaining securities fraud claimants would be better served by some variation of a Rule 723 process.

After three years in now, it has not gone as smoothly or as quickly as I hoped. And now this third 723 motion has been filed. And PERA again, narrows its request a bit, seeks to certify a class, quote, consisting of all those who purchased or otherwise acquired the publicly traded debt or equity securities of PG&E Corporation, Pacific Gas And Electric Company, or both, from April 29th, 2015 through November 15th,

2018, inclusive and who timely submitted securities claims in these Chapter 11 cases, in which securities claims have not otherwise been resolved.

So while PERA's initial motion sought certification of a class, as the briefing has evolved, it appears that both PERA and PG&E agree that the choice I make here today is whether to stick with the ADR process as the sole resolution option for the securities claimants, or to allow a simultaneous Rule 723 process to move forward on a parallel track while the ADR procedures continue.

So I'm not presently certifying a class on a final basis. And I will allow the parties to work out a consensual timetable for discovery and pre-certification briefing. It does appear to me, on the face of PERA's motion, that at least the prerequisites of Rule 7023(a) will be satisfied. I understand that PG&E feels it will be able to challenge whether commonality and adequate representation are satisfied. But we'll leave those challenges to further class discovery briefing and an eventual certification hearing.

Rule 723 -- excuse me, 7023 sets forth the standards and procedures for certifying a class. Movants, PERA, seek certification under Rule 7023(a) and 7023(b)(3).

First, under 7023(a), prerequisites of class certification are as follows: Numerosity, the class is so numerous, that joinder of all members is impractical.

Commonality, there are questions of law or fact, common to the class. Typicality, the claims or defenses of the representative parties are typical of the claims and defenses of the class. And fourth, adequate representation, the representation -- representative parties will be fairly and adequately protect the interests of the class.

As to numerosity, I agree that the number of claimants in the proposed class is so numerous that joinder of the members would be impractical. At the time Movants filed the motion, close to 4,000 claims were outstanding; and the proposed class would number in the thousands. While an impressive 571 claims were settled between the filing of the motion and the hearing, and perhaps more have been settled since, but nearly 1,000 of the so called RKS Claimants would likely opt out of the class. So there is a potential class that numbers still in the thousands. As it is evident from the significant number of joinders that have been filed and remain operative.

The PG&E argues that the Claimants could easily join in collective action via joinder or hiring the same counsel for their own. This is not a credible argument. The very point of a class action is about the impracticality of joinder, not the mere possibility. Courts have generally found that even forty class members can be, so thousands of claims certainly do satisfy that element here.

As to commonality, I agree that this element appears satisfied. The ultimate issue of liability, were class members misled into purchasing or acquiring stock or equity in PG&E due PG&E's misleading statements? And did those class members suffer a loss due to the misleading statements? While there may be challenging -- that may be challenging to prove and may ultimately not prove -- may not be proven as to the same in each potential class, even if some of the issues of PG&E debt are not held by the class representatives.

I'm sorry, I confused that a little bit. I accept that PERA has to carry its burden and that's not something I'm deciding today. But what I'm indicating is that I don't believe that the fact that some issues, particularly of PG&E debt, are not held by current class representatives. That doesn't constitute any kind of a failure.

As to whether the claims or defenses of the representative parties are typical of the claims, I also agree that Movant's share the same question of law and fact, common to the class. And aside from leading the charge in the Securities Act in the District Court, the notion that the situation presently disqualifies Movants from being representatives of the proposed class as a whole is simply not persuasive.

So I agree that, for now, the representative parties and their counsel will adequately represent the class. PG&E,

the RKS Claimants, claim that Movants' counsel are inadequate because there is a conflict of interest due to Movants' status as lead Plaintiff and counsel for the putative class in the District Court securities litigation, which is currently on hold. And that proposed class counsel has and holds economic interest adverse to the class, due to representative of -- representation -- pardon me, of putative representative class in the District Court.

Further, that the proposed class is internally conflicted between debt Claimants and equity Claimants. And that is not a problem for now, as I see, and may never be a problem.

The timing of the 723 motion and the potential certification is unprecedented, as both parties agree. No one has quoted any case, any Chapter 11 post-confirmation matter as developed as this case is, that then was presented with the class option. But so what? That doesn't mean we can't do it. The Code and the Rules do not prohibit it. And I'm satisfied that I need to let that play out.

So PG&E also puts into issue a gating issue of presumed reliance and market impact, which is likely to be addressed pre-certification akin but not -- akin to a 12(b)(6) motion, but for the necessary factual determinations that must be made. I accept that. And whether or not those determinations lead to a denial of class certification, expert

discovery appears to be mandatory and must be permitted to go forward before certification.

PG&E also warns that it may utilize appellate rights unique to securities litigation in the class action process. I cannot let the potential for a party to exercise their possible appellate rights in the event of an adverse ruling, pre-certification be the determining factor in whether the class action proceeds.

It is a possibility as the possibility of hundreds of thousands of individual trials of security claims are not resolved through the ADR process. Those are another possibility.

So ultimately, I agree with PERA that -- and the parties who have joined it, that the motion and the class action will serve as a -- excuse me -- that the motion, the class action procedure as I summarized, serve as a sufficient backstop to the ongoing ADR process. There are still thousands of claims which are unresolved. For all of those Claimants who come out on the other end of an unsuccessful mediation process, the Court will need to deal with them via further fact intensive litigation. Those Claimants will present the same issues of fact and law to the Court and do so via the process already coordinated underway is the most efficient path forward.

PG&E argues that the supplemental track for Claimants

will chill the ADR process, but its resolution of as many claims in such a short time after the motion's filing belies that fact. If anything, this motion and my decision about it, and the class action process going forward, may light a higher fire under PG&E to resolve even more claims that have not been resolved three years into the process.

Otherwise, the ADR process appeared very recently, to be reaching an endpoint. Perhaps, as pointed out at the hearing in August, that due to nonnegotiable requirements by PG&E that were simply unacceptable to some of the Claimants, such as third-party releases for officers and directors, well, I say that PG&E has the right to include those releases as part of any settlement position. But so too, the securities Claimants have the right to refuse those elements. And therefore that suggests all the more reason for them to use the alternative of the path to a possible consensual resolution.

And as PERA points out, it is almost a certainty that a mediated class settlement will push forward resolution as many Claimants are not currently served by the ADR process. Even with a dual track process, the class action offers a time tested procedure, a resolution, familiar, if not so much to bankruptcy attorneys and judges, but quite familiar to experienced class action practitioners on both sides. And the vehicle to achieve what the ADR procedures were meant to achieve, and apparently will not at this point, fully achieve

them. And that is necessary to avoid the thousands of trials that the process might help us avoid.

So what's next? PERA proposes a fast moving timetable for class discovery certification and mandatory class mediation wrapping up by the end of February of next year. After the class has been certified and the opt outs are received, the case management plan would continue apace, according to PERA. The most recent example after -- provided to the Court after the hearing in August, was the WWD matter that PERA's described with a timeline that was, in fact, concluded on a very expedited basis.

In contrast, PG&E presents examples on its post hearing filings of class actions with much longer time timetables to certification, an indeterminate amount of time for a motion to dismiss than four to eleven months for fact and expert discovery, and then two to twelve months for certification briefing, and then six months for the Court to render a decision. So at least seven months at the optimistic end, and maybe two and a half years on the most pessimistic end.

Well, neither of those choices is acceptable to me. I don't need to be overly optimistic or doomsday scenarios -- present doomsday scenarios to the parties. What I need is a prompt, realistic timetable. And while the timetable may not be -- need not be at breakneck speed as presented by PERA, I

note that this is an admitted closed universe of Claimants in the sense that we are dealing only with Claimants who filed claims in the bankruptcy, and whose claims have not been resolved. And the facts that are relevant to them should be no reason for prolonged discovery or the briefing process.

I made a commitment early in this bankruptcy. The Court will not be an impediment to resolution of issues. And to the extent that I can move this along, I will. And the same procedures will not be a further impediment to attempting, finally, to resolve hundreds, if not thousands, of unresolved securities claims.

So before I set my own timetable, what I'm going to direct is counsel for PERA, and PG&E, and RKS, certainly if they wish to participate, or any of the joining parties, if they choose to participate -- that's for them and their counsel to work out. But I want the principals to meet and confer jointly to attempt to set specific benchmarks on an agreed schedule for pre-certification, expert reports, expert discovery, and whatever else is needed in order to move to a conference -- excuse me, a certification hearing.

And if the parties cannot agree, then I guess I -- they should simply propose alternatives and I'll make a decision.

So to that end, I'm going to set a hearing quickly on our PG&E calendar for October 3rd at 10:00. And I'm going to

direct the lead counsel to meet and confer before then, promptly and four days prior, by September 29th, file a joint -- either a joint agreed schedule between -- again, between PERA and the debtor, but joined by others if appropriate. Or, if they cannot agree on one, to indicate at a status conference the issues that are separated. And I'll simply make a commitment on this record, that I'll make a decision at that hearing and fix the schedule. I would obviously prefer to do it -- have it be consensual. We've managed to get lots of other things consensually resolved, and I don't know why we can't do that here.

So with that, I don't see a need -- well, I guess, I guess for the record purposes, I will issue a simple order that states for the reasons stated on the record at this hearing, the 723 motion is granted. But I want to make sure there's no misunderstanding. It's granted subject to a timetable. That means, it may not be granted, it may be denied, because certification is not appropriate.

So with that, I will ask if anyone has any questions.

Mr. Slack?

MR. SLACK: Your Honor, just a point of clarification. There was some discussion by the Court in its rulings on a number of the factors for class certification. And I viewed those as the Court's preliminary views, because obviously, discovery, which we haven't had yet, would impact those. And

I'm assuming the Court is not ruling that we can't -- and others can't take discovery on those points, and raise those in the pre-certification process and then have those briefed at the end of that that period.

THE COURT: And that's what I intended. And Mr. Slack, I guess, to me, when I read about what's numerosity, it seems like a no brainer. If you believe that there are fact issues that would defeat numerously, I'm not here to say you can't raise it. So then I'll concede to you that, the other elements may be less precise. And yes. So the answer is to the extent that you believe discovery is appropriate for any of those elements, you have a right to preserve that time. And I'm not ruling again on the merits.

MR. SLACK: Yeah, thank you, Your Honor. I mean, in particular, because I think you have it exactly right. I mean, the idea of whether there are common issues of fact and law, I think part of the expert discovery we're going to put in and part of the discovery we're going to take, is going to go to the fact that that's just not the case here.

THE COURT: Fine. I've got it. But Mr. Slack, the flip side, again, I'm not asking you to roll over and give up any point. Numerosity seemed like the easiest one.

What I think is a little more troublesome, but I -- at least in my comments, believe I came out on the other side, is this notion that there may be some debt securities that were

purchased not by a class representatives. Well, I mean, I don't think that's a big deal. Because if they were purchased by class members, those members, it seems to me, can be represented.

But if I'm wrong about that and you think as a legal matter, there's a flaw in that, then of course. I'm not ruling that you have lost on those issues or the other ones. So call it a tentative thinking in terms of, as I said in an earlier time, I'm tired of hearing criticism apparent that it's got a conflict. But if there's a legal conflict, obviously, you need to preserve that. So I hope I've answered your question.

MR. SLACK: Yeah, we appreciate that, Your Honor, because as we said, I think -- we think that that discovery here, both on the expert side and the other and regular discovery, will be illuminating. And we look forward to the opportunity to raise those with the Court.

THE COURT: Okay.

Mr. Dubbs, any questions?

MR. DUBBS: No, Your Honor. We get the message loud and clear, and we'll abide by it and confer with counsel from PG&E as to an appropriate time schedule.

THE COURT: Ms. DiCicco, you put your camera back on. So you want to say anything?

MS. DICICCO: I would like to. Yes, Your Honor. Thank you. I want just one question, which is under the

Court's existing order, which is the July 28th order, there's currently a deadline in -- there are two deadlines in October for the securities Claimants to file new proofs of claim where they either adopt other allegations or otherwise. Obviously, for some of our clients, they may want to just be part of the class and not do that. For those who are opting out, they obviously could continue -- I assume, could continue along that path and file their claims.

So what I'd like to just make sure I understand is, whether the parties who were intending to opt out, even though it's not yet the time to opt out, whether they could simply just advise the Debtors that we're going to do that. And we just want to have some assurance that if we don't file something by the October deadlines, that our claims are preserved for inclusion in the class.

MR. SLACK: Your Honor, if I could be heard on that?

THE COURT: Yes, please.

MR. SLACK: So I think the whole idea of saying there are parallel processes are, we have ADR procedures and those ADR procedures have deadlines. Those ADR procedures are going to, we think, resolve all these. And so we don't think that the Court, after saying that these should be on parallel tracks, should be revising any of the dates or any of those, and in fact, should allow those dates to hold and to see how many claims that can be resolved using that.

And we don't know whether this -- whether a class is going to be certified until whatever time the Court ultimately decides that issue. But we all know it's going to be sometime down the road. And until then, those ADR procedures, I think the Court said, this is supposed to be in parallel. So none of those we think should be altered. Those dates should all hold.

THE COURT: Well, I think at a prior hearing I asked, and somebody had all of you probably persuaded me, I was crazy to say that people could opt out and then opt back in again. And I realized that based upon what you persuaded me, Mr. Slack, I can't today make a decision that certifies the class. If I were doing that, we could have an opt out deadline that's for real. But what happens -- let's take Ms. DiCicco's one of her group. And that group says to you, I'm not going to go with the ADR. I'm going to go with the class option -- I mean, the class action option. And then six months from now, there is no class action. What's the fate of those Claimants? They're not left out in the lurch -- in the cold, are they?

MR. SLACK: So Your Honor, I think the way all of this would work is, if there ends up being no class certified by the Court for whatever reason. And there's a whole host of reasons that could be. You know, folks are going to have the ability to prosecute their claims according to the procedures that have been put in place by the Court. And we actually think those are likely to be sufficient to get resolved most of the claims

as we go. So we -- I don't think that's really an issue. There are good procedures that are in place. And if, in fact, when the Court addresses the class certification issue, and if the Court decides to go with a class, we'll see what number of claims are outstanding at that point. And if the Court denies the class at that point, whatever claims are outstanding will get resolved by the normal process in the bankruptcy.

THE COURT: Well, Ms. DiCicco, I don't know if that answers your question, but I don't know that I can answer it today. I think that I -- look, we've got this deadline that was worked out by you and others, and it shouldn't become an offensive weapon.

But on the other hand, if I denied today's motion across the board, you'd be facing that dilemma, wouldn't you? And I don't think it's fair to PG&E to say that over PG&E's objection, I'm going to allow the 723 process to go forward, but at the same time, not stick with what I approved on a basis consistent with that July 28th order that you refer to.

So I guess the short answer is I understand that it's September 12th. You can't -- maybe can't make a decision over your clients today, but maybe by the next hearing, if you believe that there's something that ought to be done, I'll take it up with you. But I don't think I can make a decision today other than to say we've got this track running, and now I've created a second track.

MS. DICICCO: Right.

THE COURT: Okay?

MS. DICICCO: Your Honor, I think just what I want to make clear with one thing, we're not talking about jettisoning the mediation process or the ADR procedures. The paragraph that I'm talking about, the deadlines in October, are not about the parties trying to settle via mediation. It's the process for claims objection that presumes that there's not been a settlement by that date, right?

THE COURT: That's fine.

MS. DICICCO: So --

THE COURT: That's fine.

MS. DICICCO: So it's really a function of if that's the claims objection process, where there is no settlement, then it seems unfair to impose upon my clients and any other Claimants, the expense of having to create a document, amend a complaint, when this motion has been granted and we'd otherwise prefer to proceed in the class process. And that's the reason for -- we can address it at the October 1st hearing. But then it puts a lot of the parties pretty close to that deadline. And I think that --

THE COURT: Oh, I understand that.

MS. DICICCO: -- creates an unfairness in that respect that.

THE COURT: But Ms. DiCicco, imagine a couple of

things. Imagine if I didn't approve today and I denied the motion across the board. And it would seem to me your clients would have to fish or cut bait. And you're right, it's -- of course it's all solved by any creditor who settles. So we're only talking about the non-settling parties. And if there were no 723 option, they'd have to make a decision.

The flip side is true too. If there is a 723 option, and just suppose there were no ADR procedures and we just had a claims objection. And excuse me, let me rephrase that. The ADR procedures as modified as late as July, were the product of careful negotiation among experienced counsel to have some procedure in place to deal with the kind of things we talked about.

Along comes the PERA motion to say, okay, folks, you're going to have another option. My point is that, I don't think I can take away from PG&E, the ability to make you fish or cut bait. But I also raise the question just for my own purposes. If at some point, I disapprove the class action, then what do I do? The answer is, I deal with the claims process.

I mean, look, what if I just shut down the whole ADR process and shut down the 723 process? Guess who'd be trying the next 2000 cases?

Anyway, I don't have an answer.

MS. DICICCO: I understand.

THE COURT: I encourage you together to work on it.

MS. DICICCO: Okay.

THE COURT: Mr. Ritholtz, you've raised your hand a couple of times, but now you take it down again. Do you wish we heard?

MR. RITHOLTZ: No, Your Honor, I think what you just said is consistent with our position. So nothing else to add to that.

THE COURT: Okay. Thank you all for your time. I'm going to conclude the hearing.

And I'm going to go to the second matter on our calendar.

Ms. Parada, I'm going to take about a three-minute break. I'm going to turn my camera off. I'll be back in three or four minutes.

Mr. Slack and Mr. Dubbs is the only one left on the screen. Thank you for your presentation. I mean, your presence -- your participation and your argument. And as I say that I will try to make sure that the order that I issued will be bland and not controversial, because I'm clearly not branding the motion as filed. I'm doing it as I tried to explain it in my ruling. Okay? Thank you for your time.

MR. SLACK: Your Honor, I assume that those of us for the 723 can be excused?

THE COURT: Yes, of course. Yeah. I don't think any

of you are involved in the other matter on the calendar, so thank you. Thank you, all. I'm going to go off the camera for a moment.

MR. DUBBS: Thank you, Your Honor.

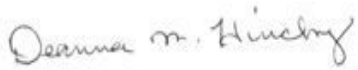
THE COURT: Thank you, Mr. Dubbs.

(Whereupon these proceedings were concluded at 10:35 AM)

I N D E X

C E R T I F I C A T I O N

I, Deanna Hinchy, certify that the foregoing transcript is a true and accurate record of the proceedings.



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/s/ DEANNA HINCHY, CDLT-254

eScribers
7227 N. 16th Street, Suite #207
Phoenix, AZ 85020

Date: September 13, 2023

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